

SERVICE DATE – APRIL 27, 2017

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1251X

SOUTHWESTERN RAILROAD, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—
IN CURRY, ROOSEVELT, CHAVES, AND EDDY COUNTIES, N.M.

Digest:¹ This decision permits Southwestern Railroad, Inc. to discontinue rail service over approximately 227.6 miles of railroad in Curry, Roosevelt, Chaves, and Eddy Counties, N.M., subject to standard employee protective conditions.

Decided: April 25, 2017

On January 17, 2017, Southwestern Railroad, Inc. (SWRR) filed with the Board a petition under 49 U.S.C. § 10502 for exemption from the provisions of 49 U.S.C. § 10903 to discontinue rail service over approximately 227.6 miles of rail line, known as the Carlsbad Division, consisting of the following segments (the Lines): (1) the Carlsbad Subdivision between milepost 0.5 at Clovis, N.M., and milepost 183.0 at Carlsbad, N.M.; (2) the Carlsbad Yard;² (3) the Carlsbad Industrial Spur between milepost 0.0 at Carlsbad, N.M., and milepost 20.0 near Carlsbad, N.M.; and (4) the Loving Industrial Spur between milepost 0.0 at Carlsbad, N.M., and milepost 20.0 at Loving, N.M. The Lines are owned by BNSF Railway Company (BNSF).

Notice of the exemption proceeding was served and published in the Federal Register on February 6, 2017 (82 Fed. Reg. 9,479). No comments concerning the proposed discontinuance were filed. On March 7, 2017, SWRR filed a letter supplementing its petition. The Board will grant the exemption from 49 U.S.C. § 10903, subject to standard employee protective conditions.

BACKGROUND

In 2004, SWRR acquired authority to lease and operate over the Lines pursuant to a lease with the Burlington Northern and Santa Fe Railway Company (now known as BNSF). See Sw. R.R.—Lease & Operation Exemption—Burlington N. & Santa Fe Ry., FD 34533 (STB served Oct. 22, 2004). According to SWRR, BNSF notified SWRR in 2016 that it wished to resume

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² SWRR states that there are no mileposts associated with the approximately 5.1 miles of rail line located in the Carlsbad Yard.

operations over the Carlsbad Division prior to the termination of the current lease. In turn, on July 29, 2016, SWRR filed a notice of exemption to reflect an amendment to the lease agreement that allowed BNSF to resume operations over the Lines on January 17, 2017. See Sw. R.R.—Amended Lease & Operation Exemption—BNSF Ry., FD 34533 (Sub-No. 1) (STB served Aug. 12, 2016).

The entirety of SWRR's rail operations are covered by two divisions, the Carlsbad Division and the Whitewater Division. In its petition to discontinue in this proceeding, SWRR explained that, in addition to discontinuing operations on its Carlsbad Division, SWRR was in the process of selling its Whitewater Division. See N.M. Cent. R.R.—Acquis. & Operation Exemption—Sw. R.R. Whitewater Div., FD 36085 (STB served Feb. 2, 2017). The sale of the Whitewater Division was expected to take place prior to a Board decision in this discontinuance exemption proceeding. Therefore, SWRR concluded that, since it would be terminating operations over its entire system and would cease to be a common carrier upon consummation of this discontinuance, employee protective conditions should not be imposed.³ However, by letter dated March 7, 2017, SWRR informed the Board that the parties involved in the sale of the Whitewater Division failed to reach a final agreement and the proposed transaction has been terminated. Therefore, SWRR explains that it can no longer assert that discontinuance of rail service over the Carlsbad Division would result in SWRR's having no other common carrier obligation.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without the prior approval of the Board. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when it finds that (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of SWRR's proposed discontinuance under 49 U.S.C. § 10903 is not necessary to carry out the RTP in this case. An exemption from the application process would promote a fair and expeditious regulatory decision-making process, reduce regulatory barriers to exit, and result in the efficient handling of this proceeding. 49 U.S.C. §§ 10101(2), (7), & (15). Other aspects of the RTP would not be adversely affected by the exemption.

The Board also finds that regulation under 49 U.S.C. § 10903 is not necessary to protect shippers from the abuse of market power. Shippers currently served by SWRR would continue

³ Where the carrier is abandoning or discontinuing operations over its entire system, the Board generally does not impose labor protective conditions. Knox & Kane R.R.—Aban. Exemption—McKean Cty., Pa., AB 551 (Sub-No. 2X) (STB served July 24, 2015).

to be served by BNSF once SWRR is granted discontinuance authority. Accordingly, the discontinuance would not result in an interruption of service and no shippers served by the Lines would be disadvantaged when SWRR ceases operations. Indeed, SWRR states that its notice of exemption filed in Docket No. FD 34533 (Sub-No. 1) provided notice to shippers that BNSF would be resuming service starting on January 17, 2017, and that no shipper has expressed concern in either proceeding.⁴

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Because, as noted above, the previously anticipated sale of SWRR's Whitewater Division has been terminated, SWRR's discontinuance of operations over the Carlsbad Division would not extinguish SWRR's common carrier obligation over its entire system. Accordingly, as a condition to granting this exemption, we will impose on SWRR the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Because this is a discontinuance of service and not an abandonment, the Board need not consider offers of financial assistance (OFAs) under 49 U.S.C. § 10904 to acquire the Lines for continued rail service, trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the Lines under 49 U.S.C. § 10905.

Because there would be environmental review during any subsequent proceeding for authority to abandon, this discontinuance proceeding does not require an environmental review.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of operations by SWRR over the above-described segments of rail line, subject to the employee protective conditions set forth in Oregon Short Line.

2. Petitions to stay must be filed by May 8, 2017. Petitions to reopen must be filed by May 17, 2017.

3. This exemption will be effective on May 27, 2017.

By the Board, Board Members Begeman, Elliott, and Miller.

⁴ Because we find that regulation of the proposed discontinuance is not necessary to protect shippers from the abuse of market power, we need not determine whether the proposed discontinuance is limited in scope.